

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 3:08-CR-176
)	(PHILLIPS/SHIRLEY)
RODRIGO RODRIGUEZ-CASTILLO,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case came before the Court on February 4, 2009. This hearing was originally scheduled to address a number of pending pretrial motions [Docs. 9-13], but as more fully explained below, at the time of hearing it was appropriate to address only the Defendant's Motion to Continue [Doc. 23]. Assistant United States Attorney Trey Hamilton, appearing on behalf of Assistant United States Attorney Frank Dale, was present representing the Government. Attorney Ursula Bailey ("Attorney Bailey") was present representing the Defendant, who was also present.

The Motion to Continue [Doc. 23] states that the language barrier between Attorney Bailey and the Defendant has complicated communication between the Defendant and counsel, and as a result, trial preparation has taken longer than expected. Further, the motion states that the Defendant and the Government are actively seeking resolution of this matter. At the hearing, Attorney Bailey reiterated the contents of the motion and requested both a continuance of the trial date, currently set for February 9, 2009, and a new motion hearing date for addressing the pending

pretrial motions. Attorney Bailey stated that she had explained to the Defendant that if a continuance were granted he would remain in custody until the new trial date. Attorney Bailey confirmed that the Defendant had been informed of his right to a speedy trial, but despite these rights and continued incarceration, he sought a continuance and believed all time between the hearing and the new trial date would be fully excludable for purposes of the Speedy Trial Act.

The Government had no objection to the continuance and agreed that any time between the hearing and the new trial date would be fully excludable for purposes of the Speedy Trial Act because, pursuant to 18 U.S.C. § 3161(h)(8)(A), the ends of justice served by allowing defense counsel additional time to confer with the Defendant, in light of the language barrier between the two, outweighed the interest of the public and the Defendant in a speedy trial.

Based on the foregoing, the Court finds the Defendant's Motion to Continue **[Doc. 23]** is well-taken, and it is **GRANTED**. The Court finds that the ends of justice served by granting the motion outweigh the best interest of the public and the Defendant in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). The Court finds that a continuance of the February 9, 2009, trial date is required to allow the Defendant the reasonable time necessary to prepare for trial even taking into account counsel's due diligence. See 18 U.S.C. § 3161(h)(8)(B)(iv). Notwithstanding due diligence by counsel, the new trial date of May 27, 2009, is also necessary to allow for continuance of counsel, in light of Attorney Bailey's upcoming surgery. Id.

In light of these findings and its granting of the motions, the Court set a new trial date of May 27, 2009. The Court further finds that the period of time between February 4, 2009, and the new trial date of May 27, 2009, shall be fully excludable as provided by the Speedy Trial Act. 18 U.S.C. § 3161(h)(8)(A)-(B).

Accordingly, it is ORDERED:

1. The Defendant's Motion to Continue [Doc. 23] is **GRANTED**;
2. A motion hearing is set for **March 5, 2009 at 9:30 a.m.**;
3. The trial is reset to commence at **9:00 a.m. on May 27, 2009**, before the Honorable Thomas Phillips, United States District Judge; and
4. All time between February 4, 2009, and the new trial date of May 27, 2009, is fully excludable time under the Speedy Trial Act for the reasons set forth above.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge